

Adopted	Rejected
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COMMITTEE REPORT

YES:	7
NO:	5

MR. SPEAKER:

*Your Committee on Public Health, to which was referred House Bill 1258, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 Medicaid and to make an appropriation.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 5-1-16-37 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. If approval by
- 8 the state department of health is required for the acquisition of health
- 9 facility property under ~~IC 16-29-1~~, **IC 16-29-1.1**, health facility
- 10 property may not be financed under this chapter without obtaining
- 11 approval of the project under ~~IC 16-29-1~~. **IC 16-29-1.1**."
- 12 Page 1, delete lines 1 through 5.
- 13 Page 2, line 12, delete "shall be used to enhance" and insert "**are**
- 14 **appropriated to pay for services under the state Medicaid**
- 15 **program**."

1 Page 2, delete lines 13 through 42, begin a new paragraph and
2 insert:

3 "SECTION 3. IC 16-18-2-67 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 67. (a)
5 "Comprehensive care bed", for purposes of ~~IC 16-29-1~~, **IC 16-29-1.1**,
6 has the meaning set forth in ~~IC 16-29-1-1~~; **IC 16-29-1.1-1**.

7 (b) "Comprehensive care bed", for purposes of IC 16-29-2, has the
8 meaning set forth in IC 16-29-2-1.

9 SECTION 4. IC 16-21-1-9 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) Except as
11 provided in ~~IC 16-29-1-11~~, **IC 16-29-1.1-11**, the executive board may,
12 upon recommendation by the state health commissioner and for good
13 cause, waive a rule:

14 (1) adopted under this chapter; or
15 (2) that may be waived under IC 16-28 for a specified time for a
16 hospital based health facility or a hospital licensed under this
17 article.

18 (b) Disapproval of waiver requests requires executive board action.

19 (c) A waiver may not adversely affect the health, safety, and welfare
20 of the residents or patients.

21 SECTION 5. IC 16-21-6-4 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The state
23 department shall promptly, after receipt of a notice of intent to incur a
24 capital expenditure under ~~IC 16-29-1~~ **IC 16-29.1.1** because of the
25 proposed construction or addition of comprehensive care beds or the
26 proposed conversion of beds to comprehensive care beds, file a copy
27 of this notice with the reports required to be filed under section 3 of
28 this chapter.

29 (b) The state department also shall file the parts of reports,
30 documents, or correspondence that provide further information
31 regarding proposed capital expenditures and proposed changes in fees
32 or charges related to the proposed capital expenditure with the reports
33 required to be filed under section 3 of this chapter.

34 SECTION 6. IC 16-28-1-7 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The council shall
36 do the following:

37 (1) Propose the adoption of rules by the department under
38 IC 4-22-2 governing the following:

- 1 (A) Health and sanitation standards necessary to protect the
- 2 health, safety, security, rights, and welfare of patients.
- 3 (B) Qualifications of applicants for licenses issued under this
- 4 article to assure the proper care of patients.
- 5 (C) Operation, maintenance, management, equipment, and
- 6 construction of facilities required to be licensed under this
- 7 article if jurisdiction is not vested in any other state agency.
- 8 (D) Manner, form, and content of the license, including rules
- 9 governing disclosure of ownership interests.
- 10 (E) Levels of medical staffing and medical services in
- 11 cooperation with the office of Medicaid policy and planning,
- 12 division of family and children, and other agencies authorized
- 13 to pay for the services.
- 14 (2) Recommend to the fire prevention and building safety
- 15 commission fire safety rules necessary to protect the health,
- 16 safety, security, rights, and welfare of patients.
- 17 (3) Classify health facilities in health care categories.
- 18 (4) Encourage the development of social and habilitative
- 19 programs in health facilities, as recommended by the community
- 20 residential facilities council.
- 21 (5) Act as an advisory body for the division, commissioner, and
- 22 state department.
- 23 (6) Adopt rules under IC 4-22-2, as provided in ~~IC 16-29-1-13.~~

24 **IC 16-29-1.1-13.**

25 SECTION 7. IC 16-29-1.1 IS ADDED TO THE INDIANA CODE
 26 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 27 UPON PASSAGE]:

28 **Chapter 1.1. Health Facility Certificates of Need;**
 29 **Comprehensive Care Beds**

30 **Sec. 1. (a) As used in this chapter, "comprehensive care bed"**
 31 **means a bed in a comprehensive care facility that:**

- 32 (1) is licensed or is to be licensed under IC 16-28-2; or
- 33 (2) functions as a bed licensed under IC 16-28-2.

34 (b) The term does not include a comprehensive care bed that
 35 will be used solely to provide specialized services. The state
 36 department shall review applications for a certificate of need for
 37 a comprehensive care bed used solely to provide specialized
 38 services under IC 16-29-2.

1 **Sec. 2. Except as provided in IC 16-29-2, the Indiana health**
2 **facilities council shall review the following applications for a**
3 **certificate of need:**

4 **(1) Applications for comprehensive care beds that are to be**
5 **certified for participation in a state or federal reimbursement**
6 **program, including programs under Title XVIII or Title XIX**
7 **of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C.**
8 **1396 et seq.).**

9 **(2) Applications to construct or add comprehensive care beds**
10 **or to convert beds to comprehensive care beds.**

11 **Sec. 3. Except as provided in IC 16-29-2, the Indiana health**
12 **facilities council shall make a finding based on information**
13 **prepared by the state department in accordance with IC 16-30 and**
14 **any other relevant information as to the need for the**
15 **comprehensive care beds or the certification of comprehensive care**
16 **beds as requested in the application. The council shall recommend**
17 **and the state department shall approve a certificate of need for**
18 **additional comprehensive care beds or the certification of**
19 **comprehensive care beds only after finding the following:**

20 **(1) Certification or addition of comprehensive care beds in the**
21 **county is necessary.**

22 **(2) The applicant for a certificate of need has illustrated or**
23 **documented the applicant's experience or capacity to provide**
24 **quality, effective, and efficient care that includes a description**
25 **of any past or current adverse licensure action against any**
26 **facility owned, operated, or managed by the applicant.**

27 **Sec. 4. There is a presumption that the certification of the beds**
28 **is not necessary if, in the county of application:**

29 **(1) the existing utilization rate for all certified comprehensive**
30 **care beds is less than ninety percent (90%); or**

31 **(2) the addition of the certified beds proposed in the**
32 **application will reduce the existing utilization rate for all**
33 **certified comprehensive care beds below ninety percent**
34 **(90%).**

35 **Sec. 5. There is a presumption that additional noncertified beds**
36 **are not necessary if, in the county of application:**

37 **(1) the existing utilization rate for all noncertified**
38 **comprehensive beds is less than ninety percent (90%); or**

(2) the addition of the noncertified beds proposed in the application will reduce the existing utilization rate for all noncertified comprehensive beds below ninety percent (90%).

Sec. 6. (a) Except as provided in IC 16-29-2 and IC 16-29-3-1:

(1) comprehensive care beds may not be constructed or added; and

(2) beds may not be converted to comprehensive care beds; without the review and approval required in this chapter.

(b) Comprehensive care beds that are not certified for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.), may not be certified without the review and approval required in this chapter.

(c) The review and approval required in this chapter are a condition to the licensure of the facility.

Sec. 7. A certificate of need for a project to construct, add, or convert beds that receives final approval of the state department under this chapter or IC 16-29-1 (before its repeal) becomes void eighteen (18) months after the determination becomes final unless:

(1) construction plans for the project are approved by the state department and the department of fire and building safety;

(2) the applicant has completed construction of the project's foundation in conformity with the approved plans as certified by an independent architect licensed under IC 25-4 or an independent professional engineer licensed under IC 25-31; and

(3) construction work on the project is continuous and in conformity with the approved plans.

Sec. 8. Notwithstanding sections 1 through 7 of this chapter:

(1) a health facility may construct a maximum of fifteen (15) comprehensive care beds; or

(2) a hospital that provides long term care services may construct a maximum of ten (10) comprehensive care beds; that are not to be certified for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42

1 U.S.C. 1396 et seq.).

2 **Sec. 9. This chapter does not apply to comprehensive care beds**
 3 **that are:**

4 (1) owned, operated, or sponsored by a religious organization
 5 that:

6 (A) is an Indiana nonprofit corporation;

7 (B) was exempt, by virtue of the religious organization's
 8 status as a religious organization, from gross income
 9 taxation under IC 6-2.1-3-20 on or before December 31,
 10 2001;

11 (C) is operated for bona fide religious purposes; and

12 (D) is not controlled, owned, or operated by a hospital
 13 licensed under IC 16-21-2; or

14 (2) owned or operated by an Indiana nonprofit corporation
 15 that is owned by a religious organization described in
 16 subdivision (1);

17 if the comprehensive care beds are used to serve members of the
 18 religious organization.

19 **Sec. 10. This chapter does not apply to comprehensive care beds**
 20 **that are owned, operated, or sponsored by a fraternal organization**
 21 **that:**

22 (1) was exempt from gross income taxation under
 23 IC 6-2.1-3-21 on or before December 31, 2001; and

24 (2) owned, operated, or sponsored a health facility licensed
 25 under IC 16-28-2 on December 31, 2001;

26 if the comprehensive care beds are used to serve members of the
 27 fraternal organization.

28 **Sec. 11. (a) Except as provided in subsection (b) and section 8(2)**
 29 **of this chapter, beds exempt from review by the Indiana health**
 30 **facilities council under sections 9 and 10 of this chapter may not be**
 31 **sold, leased, or otherwise conveyed to any person for ten (10) years**
 32 **after the date the beds are licensed. Violation of this subsection**
 33 **results in loss of eligibility for participation in state or federal**
 34 **reimbursement programs under Title XVIII or Title XIX of the**
 35 **federal Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C.**
 36 **1396 et seq.).**

37 (b) Subsection (a) does not prohibit the sale, lease, or
 38 conveyance of comprehensive care beds described in section 9 of

1 **this chapter to another:**

2 **(1) religious organization described in section 9(1) of this**
3 **chapter; or**

4 **(2) nonprofit corporation that is owned by a religious**
5 **organization.**

6 **However, beds sold, leased, or conveyed under this subsection must**
7 **be used to serve the members of either the religious organization**
8 **or the religious organization's nonprofit corporation to whom the**
9 **beds are conveyed or that conveys the beds.**

10 **(c) Subsection (a) does not prohibit the sale, lease, or conveyance**
11 **of comprehensive care beds described in section 10 of this chapter**
12 **to another fraternal organization described in section 10 of this**
13 **chapter. However, beds sold, leased, or conveyed under this**
14 **subsection must be used to serve members of either the fraternal**
15 **organization to whom the beds are conveyed or the fraternal**
16 **organization that conveys the beds.**

17 **Sec. 12. The person to whom a certificate of need has been**
18 **granted, after the review and approval required by this chapter, or**
19 **under any statute or rule implementing former Section 1122 of the**
20 **Social Security Act, as amended (42 U.S.C. 1320a-1), is the owner**
21 **of the certificate of need until the person transfers or alienates the**
22 **ownership interest in the certificate. Unless the certificate of need**
23 **expires or is voided, once issued, the certificate of need is the**
24 **personal property of the owner and is freely transferable or**
25 **alienable, except that the certificate of need may not be used**
26 **outside of the county with respect to which the certificate of need**
27 **was issued.**

28 **Sec. 13. The Indiana health facilities council shall adopt rules**
29 **under IC 4-22-2 to implement this chapter and to establish a**
30 **reasonable fee for filing and review of an application under this**
31 **chapter. A rule adopted under this chapter may not be waived.**
32 **Fees imposed in connection with the certificate of need review**
33 **under this article are payable to the state department for use in**
34 **administration of the certificate of need program created by this**
35 **chapter.**

36 **Sec. 14. The Indiana health facilities council shall consider the**
37 **following when determining whether to recommend the issuance**
38 **of a certificate of need:**

(1) Information, if available, regarding whether the applicant has provided quality care services.

(2) The costs the applicant has incurred to provide services.

Sec. 15. A decision of the council under this chapter is subject to review under IC 4-21.5.

SECTION 8. IC 16-29-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Notwithstanding ~~IC 16-29-1~~, **IC 16-29-1.1**, a hospital licensed under IC 16-21-2 may convert:

- (1) beginning January 1, 1986, not more than thirty (30) acute care beds to skilled care comprehensive long term care beds; and
- (2) beginning June 1, 1989, not more than an additional twenty (20) acute care beds to either intermediate care comprehensive long term care beds or skilled care comprehensive long term care beds;

that are to be certified for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.), if those beds will function essentially as beds licensed under IC 16-28.

SECTION 9. IC 34-52-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Subject to any other statute governing reimbursement of fees and other expenses, this chapter applies to the reimbursement of the fees and other expenses incurred in preparing for or prosecuting:

- (1) a proceeding under IC 4-21.5-5 to judicially review a final order made by a state agency;
- (2) an appeal from a final determination made by the worker's compensation board;
- (3) an appeal of a final determination made by the department of state revenue; or
- (4) an appeal of a final determination made by the department of workforce development or the department of workforce development unemployment insurance review board.

(b) However, this chapter does not apply to an order or other determination:

- (1) under:
 - (A) IC 16-27-1;

- 1 (B) IC 16-28;
- 2 (C) ~~IC 16-29-1~~; **IC 16-29-1.1**;
- 3 (D) IC 16-30;
- 4 (E) IC 12-28-4; or
- 5 (F) IC 12-28-5;
- 6 (2) by an agency described by IC 25-1-8-1; or
- 7 (3) by the board of podiatric medicine.

8 SECTION 10. [EFFECTIVE UPON PASSAGE] (a)
 9 **Notwithstanding IC 16-29-1.1, as added by this act, a health facility**
 10 **(as defined by IC 16-18-2-167) is not required to obtain a**
 11 **certificate of need to construct comprehensive care beds (as**
 12 **defined by IC 16-29-1.1-1, as added by this act) if:**

- 13 (1) **construction plans for the project are approved by the**
 14 **state department of health and the department of fire and**
 15 **building safety by March 15, 2002;**
- 16 (2) **the applicant has completed construction of the project's**
 17 **foundation by July 1, 2002, in conformity with the approved**
 18 **plans as certified by an independent architect licensed under**
 19 **IC 25-4 or an independent professional engineer licensed**
 20 **under IC 25-31; and**
- 21 (3) **construction work on the project is continuous and in**
 22 **conformity with the approved plans.**

23 (b) **This SECTION expires July 1, 2004.**

24 SECTION 11. [EFFECTIVE UPON PASSAGE] (a) **As used in this**
 25 **SECTION, "commission" refers to the select joint commission on**
 26 **Medicaid oversight established by IC 2-5-26-3.**

27 (b) **The select joint commission on Medicaid oversight shall**
 28 **study the occupancy rates of health facilities in Indiana. The study**
 29 **must include the following:**

- 30 (1) **Whether there is a correlation between occupancy and**
 31 **efficient operation of health facilities.**
- 32 (2) **The effect of occupancy rates on the state Medicaid**
 33 **program.**
- 34 (3) **The effect of state action on occupancy rates.**
- 35 (4) **Methods to increase occupancy rates.**

36 (c) **The commission shall invite and consider testimony from the**
 37 **following:**

- 38 (1) **State agencies.**

- 1 **(2) Health facilities.**
- 2 **(3) Consumers.**
- 3 **(d) The commission shall issue a final report before December**
- 4 **1, 2002.**
- 5 **(e) This SECTION expires January 1, 2003."**
- 6 Page 3, delete line 1.
- 7 Page 3, line 29, delete "shall be used" and insert "**is appropriated**".
- 8 Page 3, line 30, delete "to supplement and enhance reimbursement
- 9 to nursing".
- 10 Page 3, line 31, delete "facilities".
- 11 Page 3, delete lines 33 through 38.
- 12 Page 3, line 39, delete "(g)" and insert "**(f)**".
- 13 Page 3, line 40, delete "shall be expended to" and insert "**is**
- 14 **appropriated to pay for**".
- 15 Page 3, delete line 41.
- 16 Page 4, line 2, delete "(h)" and insert "**(g)**".
- 17 Page 4, line 10, delete "(i)" and insert "**(h)**".
- 18 Page 6, delete lines 31 through 38, begin a new paragraph and
- 19 insert:
- 20 "SECTION 20. [EFFECTIVE UPON PASSAGE] **(a) The state's**
- 21 **rate setting contractor shall calculate, using the most recently**
- 22 **completed cost reports on file as of May 31, 2002, and notify each**
- 23 **health facility of its reimbursement rate under this act not later**
- 24 **than August 1, 2002.**
- 25 **(b) Beginning August 1, 2002, the office shall pay Medicaid**
- 26 **reimbursement rates as modified by this act.**
- 27 **(c) This SECTION expires July 1, 2007."**

1 Page 7, between lines 21 and 22, begin a new line block indented
2 and insert:

3 **"(5) Any other rule that adjusts Medicaid reimbursement for**
4 **health facilities that is adopted by the office after September**
5 **1, 2001, but before the passage of this act."**

6 Renumber all SECTIONS consecutively.
 (Reference is to HB 1258 as introduced.)

and when so amended that said bill do pass.

Representative Brown C